

International and European Commercial Law

(6 credits)

Module Convenors

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Course Objectives

The course deals with international commercial contracts. More specifically, the course covers the following topics: **What is an International Commercial Contract? - The governing law of International Commercial Contracts** (uniform rules of international conventions/national laws applicable by virtue of conflict of law rule or by choice of the parties, UNIDROIT Principles, European Principles of Contract Law, INCOTERMS, Vienna Convention for the International Sale of Goods) – The formation of **International Commercial Contracts** (Confidentiality agreements, Letters of Intent) – The Structure of **International Commercial Contracts Structure** (Definitions, Operative Provisions, Recital Clauses, Interpretation Clauses, Confidentiality Clauses, Penalty Clauses, Limitation of Liability and Exemption Clauses, Force Majeure Clauses, Hardship Clauses, Assignment Clauses, Termination Clauses)

Knowledge and understanding

Critical knowledge of the core subjects related to the course, in both international and national law perspective, in a systematic perspective. Knowledge and understanding of the economic ratio behind the issues covered, taking into account the international debate and the political-economic implications.

Applying knowledge and understanding

Ability to apply knowledge acquired during the course in order to analyse and discuss controversial cases in a consistent way.

Making judgements

Improvement of the ability to understand and critically assess the core subjects related to the course, considering also the political-economic implications; ability to connect, in a consistent way, the different issues examined in the course.

Communication skills

Improvement of the ability to describe and discuss, in a clear and appropriate legal language, the core subjects and the controversial issues of international contracts law.

Learning skills

Improvement of the ability to study in an independent and critical way.

Course Structure

There will be **18 lectures** taking place, each lasting **2 hours**. At the end of each lesson a Q&A time is scheduled. An overview of the content of these is outlined below, and these

will aim to provide an introduction to the subject matter. In addition to these, if requested, **tutorials** may be organized on specific arguments.

Course Assessment**

The proposed research topics offer an opportunity for further in-depth analysis of the subjects examined during the lecture. Students will undergo one written evaluation test and the end of the course. The test, which could take place in telematic mode, may consist in the resolution of some multiple-choice questions, as well as the writing of a short essay on the topics covered in previous lessons, as well as a case study.

Reading List

Standard readings-for this module include:

- M. Fontaine – F. de Ly, *Drafting International Contracts*, Martinus Nijhoff eds., 2009 (only selected parties, available for free on Discovery Sapienza)
- M.J. Bonell, *The law governing international commercial contracts and the actual role of the Unidroit principes*, in *Unif. Law Rev.*, 2018
- M.J. Bonell, *An International Restatement of Contract Law : The UNIDROIT Principles of International Commercial Contracts*, Transational Pub, 2005 (only selected parties, available for free on Discovery Sapienza)
- R. Goode, H. Kronke, E. McKendrick, *Transnational commercial law*, Oxford, 2015 (only selected chapters, available for free on Discovery Sapienza)
- D. Ruckteschler, T. Stooss, *International Commercial Courts: A Superior Alternative to Arbitration?*, in *J. Int. Arb.*, 2019 (made available to students)
- L. R. Nottage, *The Procedural Lex Mercatoria: The Past, Present and Future of International Commercial Arbitration*, Nottage, Luke R., *The Procedural Lex Mercatoria: The Past, Present and Future of International Commercial Arbitration* (December 1, 2006). Sydney Law School Research Paper No. 06/51, CDAMS Discussion Paper No. 03/1E , Available at SSRN: <https://ssrn.com/abstract=838028> or <http://dx.doi.org/10.2139/ssrn.838028>

Internet resources for this module include:

EUR-Lex offers access to EU law, case-law by the Court of Justice of the European Union and other public EU documents: <https://eur-lex.europa.eu>

Official website of the European Court of Justice: <https://curia.europa.eu> (in particular, the “case law section”, available at https://curia.europa.eu/jcms/jcms/P_106308/en/)

Discovery Sapienza (<https://opac.uniroma1.it>) (in order to access electronic resources)

<https://Unilex.info> (official website by Unidroit, International Case Law & Bibliography on Unidroit Principles of International Commercial Contracts and on United Nations Conventions on Contracts for the International Sale of Goods).

Lecture Overview

Lecture	Topic	Overview of Topics	Independent Work*
Lecture 1	1. Course introduction. The governing Law of International Contracts		
	2. The UNIDROIT Principles	<ul style="list-style-type: none"> • General introduction 	Recommended reading: Bonell, The law governing international commercial contracts, etc.,
	3. The UNIDROIT Principles	<ul style="list-style-type: none"> • Structure and scope of the UNIDROIT principles 	Recommended reading: Bonell, An International Restatement, etc., chapt. 1, 2 and 3.
	4. International Sale of Goods: part I	<ul style="list-style-type: none"> • Vienna Convention on Contracts for the International Sale of Goods (CISG) • Purpose and scope of application of the CISG • Contract formation and terms • Incoterms • Usages 	Recommended reading R. Goode, H. Kronke, E. McKendrick, <i>Transnational commercial law</i> , Oxford, 2015, 215-245
	5. International Sale of Goods: part II	<ul style="list-style-type: none"> • Rights and duties of the parties • Non performance and remedies 	Recommended reading R. Goode, H. Kronke, E. McKendrick, <i>Transnational commercial law</i> , Oxford, 2015, 245-267

Lecture	Topic	Overview of Topics	Independent Work*
	6. International Contracts formation	<ul style="list-style-type: none"> • LOI (letter of intent) 	Recommended reading: Fontaine-De Ly, Chapt. 1.
	7. International Contracts Interpretation (1 of 2)	<ul style="list-style-type: none"> • Recital clauses 	Recommended reading: Fontaine-De Ly, Chapt. 2.
	8. International Contracts Interpretation (2 of 2)	<ul style="list-style-type: none"> • Interpretation Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 3.
	9. Confidentiality	<ul style="list-style-type: none"> • Confidentiality Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 5.
	10. International Contracts Performance	<ul style="list-style-type: none"> • Best Efforts • Reasonable Care • Due diligence • General Trade Standards 	Recommended reading: Fontaine-De Ly, Chapt. 4.
	11. Damages (1 of 2)	<ul style="list-style-type: none"> • Penalty Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 6.
	12. Damages (2 of 2)	<ul style="list-style-type: none"> • Limitation of Liability and Exemption Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 7.
	13. Force Majeure	<ul style="list-style-type: none"> • Force Majeure Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 8.
	14. Hardship	<ul style="list-style-type: none"> • Hardship Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 9.
	15. Assignment	<ul style="list-style-type: none"> • Assignment Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 11.

Lecture	Topic	Overview of Topics	Independent Work*
	16. Termination	<ul style="list-style-type: none"> • Termination Clauses 	Recommended reading: Fontaine-De Ly, Chapt. 12.
	17. Dispute resolution in international commercial matters: sources of discipline, principles of procedure, choice of law.	<ul style="list-style-type: none"> • Models and institutions: <ul style="list-style-type: none"> a. international commercial arbitration: b. international commercial courts 	Recommended reading: Ruckteschler et al. Nottage
	18. Case Law Discussion		